

(iii) "Cost to the acquiring agency," for purposes of Federal (FHWA) participation, may include the fair market value payment, incidental acquisition expenses, settlement costs, and clearance and demolition costs, subject to the agreement between the parties, but shall exclude interest on borrowed money, and administrative and overhead expenses. (See also 49 CFR 24.6 regarding relocation matters.)

(iv) When the "cost to acquiring agency" forms the basis of value for participation, FHWA may accept either a parcel by parcel cost or an overall proration based on total area without regard to location of improvements within the acquiring agency's project area. Where a parcel by parcel basis is used, costs may be prorated on an area basis where only a part of a parcel is required for highway purposes.

(4) Where an urban renewal or any other such federally assisted agency performs work in connection with acquisition of rights-of-way for Federal or Federal-aid highway projects, FHWA may accept certifications of another Federal agency that the work has been performed in accordance with its governing regulations.

(p) *Separation of functions.* (1) Except as provided in 23 CFR part 750, subpart D, Federal funds may not participate in the cost of acquisition of a property, or related incidental costs, where:

(i) [Reserved]

(ii) Payments have been delivered in person by those who have negotiated, appraised, or acted as reviewing appraiser for the property, or

(iii) Payments have been delivered in person by the attorney who negotiated a settlement with the owner.

(2) The provisions of paragraph (p)(1) of this section apply whether such person was a salaried employee of the SHD or other acquiring agency, or was retained on a fee basis.

(q) *Construction in mitigation of damages.* Costs of construction performed by the SHD in order to mitigate damages to a remainder of real property are eligible for Federal participation, provided that such construction results in an appropriate reduction in compensation to be paid the owner.

(r) *Appraisal costs and minimum payment.* (1) If otherwise eligible, Federal

funds may participate in the cost of appraisal and specialty reports obtained by the State in accordance with its accepted plan of operation.

(2) Where the State prescribes a minimum payment, not to exceed \$500, for the acquisition of a parcel, although the approved appraisal estimate of just compensation reflects a lesser or even a zero consideration, Federal participation shall be allowed if such payment is otherwise eligible.

[39 FR 26416, July 19, 1974; 39 FR 45215, Dec. 31, 1974, as amended at 40 FR 41524, Sept. 8, 1975; 41 FR 9321, Mar. 4, 1976; 50 FR 34092, 34093, Aug. 23, 1985; 54 FR 47075, Nov. 9, 1989; 59 FR 25327, May 16, 1994]

#### § 710.305 Support for claims.

(a) *Progress and final claims.* (1) Any progress or final claim for Federal fund reimbursement of expenditures made for right-of-way shall be supported by the following documents and information:

(i) A right-of-way map or plan showing the rights-of-way authorized and actually acquired including parcel identification numbers, area acquired, property lines of the area acquired, and any other pertinent data affecting the cost of right-of-way such as structures, improvements, and fences.

(ii) Statement of cost of right-of-way showing:

(A) Parcel number.

(B) Cost of parcel.

(C) Cost of excess land, if any, acquired from same ownership.

(D) Credits by parcel or project.

(E) Incidental expenses by parcel or project.

(F) Cost of construction performed in mitigation of damages on a parcel basis, if claimed as a right-of-way item.

(2) The required documents and information may be submitted with the claim or made available in the SHD's files in readily identifiable form as determined appropriate by the FHWA in consultation with the SHD. Further, where a right-of-way map or plan which meets the requirements set forth in paragraph (a)(1)(i) of this section has been previously submitted, the FHWA may accept such map or plan for final or progress claim purposes.

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(3) The information required in paragraph (a)(1)(ii) of this section may be submitted under current billing procedures where a memorandum of understanding on such procedures is in effect between the SHD and FHWA.

(b) *Document availability.* All plats, appraisals, options, purchase agreements, title evidence, negotiation records, deeds, relocation assistance and payment records, and other data and documents relative to the acquisition of the right-of-way shall be available for inspection at reasonable times by authorized representatives of the FHWA and other authorized Federal representatives.

(c) *Federal-aid project numbers.* Right-of-way plans, contracts, deeds, appraisals, options, vouchers, correspondence, and all other documents and papers to which FHWA needs to refer shall carry the Federal-aid project number for ready identification.

[39 FR 26416, July 19, 1974; 39 FR 45215, Dec. 31, 1974]

## § 710.306 Withholding Federal participation.

(a) If the FHWA determines that any amount claimed is not adequately supported, it may approve Federal participation in the amount it determines is adequately supported and shall notify the SHD, in writing, citing the reasons why items and amounts are not eligible for Federal participation. Where correctable noncompliance with provisions of law or FHWA requirements exists, Federal funds may be withheld until compliance is obtained. Where the noncompliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total.

(b) If, at any time, the FHWA determines that the organization, practices, and procedures actually applied by the SHD are not in substantial conformity with those accepted by the FHWA, or are otherwise not acceptable, the FHWA shall notify the SHD in writing. No further authorizations for acquisition of right-of-way shall be issued by the FHWA after the date of such notification until:

(1) A review of the facts substantiates to the satisfaction of FHWA that the SHD's accepted practices and pro-

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cedures are satisfactory and will be adhered to by the SHD, or

(2) Revised practices and procedures have been submitted by the SHD and accepted by FHWA. The FHWA may participate in claims made or to be made by the SHD following review of the facts pertaining to the matter.

## PART 712—THE ACQUISITION FUNCTION

### Subpart A—[Reserved]

### Subpart B—General Provisions and Project Procedures

Sec.

- 712.201 Purpose.
- 712.202 Applicability.
- 712.203 General provisions.
- 712.204 Project procedures.

### Subpart C—[Reserved]

### Subpart D—Administrative Settlements, Legal Settlements, and Court Awards

- 712.401 Purpose.
- 712.402 Definitions.
- 712.403 Applicability.
- 712.404 Administrative settlements.
- 712.405 Legal settlements.
- 712.406 Court awards.
- 712.407 Noncompensable items.
- 712.408 Special counsel.

### Subpart E—Federal Land Transfers and Direct Federal Acquisition

- 712.501 Purpose.
- 712.502 Applicability.
- 712.503 Federal land transfers.
- 712.504 Direct Federal acquisition.

### APPENDIX 1 TO SUBPART E—APPLICATION FOR FEDERAL LAND TRANSFERS

### Subpart F—Functional Replacement of Real Property in Public Ownership

- 712.601 Purpose.
- 712.602 Applicability.
- 712.603 Federal lands.
- 712.604 Functional replacement.
- 712.605 Federal participation.
- 712.606 Procedures.

### Subpart G—Right-of-Way Revolving Fund

- 712.701 Purpose.
- 712.702 Policies.
- 712.703 Procedures.

AUTHORITY: 23 U.S.C. 101(a), 107, 108, 111, 114, 204, 210, 308, 315, 317, and 323; 42 U.S.C.